

**A RESOLUTION BY PUBLIC SAFETY AND LEGAL ADMINISTRATION
COMMITTEE**

A RESOLUTION AUTHORIZING [i] THE SETTLEMENT OF A CONSTRUCTION CLAIM AND LAWSUIT BY WESTON SOLUTIONS, INC. AGAINST THE CITY OF ATLANTA RELATING TO CONTRACT NO. FC-5508-93; GUN CLUB ROAD SANITARY LANDFILL CLOSURE, IN THE TOTAL AMOUNT OF \$390,000; [ii] THE CITY ATTORNEY TO EXECUTE ANY NECESSARY SETTLEMENT AGREEMENT TO EFFECTUATE THE SETTLEMENT; AND [iv] FOR OTHER PURPOSES.

BACKGROUND:

The City and Weston Solutions, Inc. entered into a Contract on April 19, 1995, that provided for the design and construction of the closure of the Gun Club Road Sanitary Landfill;

The original Contract value was based on a guaranteed maximum price (GMP) valued at \$7,500,000;

Total Change Orders to the Contract during its time of performance increased Weston's original Contract value by \$610,379.39; Weston's adjusted Contract amount for approved and executed change orders was \$8,110,379.39;

During the course of the Project, on March 27, 1998, Weston submitted a Request for Equitable Adjustment to the City for \$1,265,539.88 alleging it incurred additional costs during the Project relating to: (1) increased Contract unit quantities; and (2) out-of-scope extra work.

Weston filed a lawsuit against the City on October 28, 2002, seeking payment of its Request for Equitable Adjustment;

The City's Law Department retained Britton & Associates, Inc. (a construction claim consultant) to review Weston's Request for Equitable Adjustment;

On July 1, the City and Weston engaged in an informal settlement mediation in which a tentative settlement of the \$1.2 million claim was reached for \$390,000;

After nearly a year of litigation, and intensive settlement discussions, the parties have agreed to settle the lawsuit for \$390,000, based upon, among other things, an analysis of litigation risk, the consideration of the cost to complete discovery in the case, file dispositive motions and go to trial, and the parties' consultants' analysis of the Request for Equitable Adjustment;

The City has determined that it is desirable and in its best interests to settle the Request for Equitable Adjustment and the lawsuit and to pay Weston the sum of \$390,000;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the City Attorney is authorized to settle the case of Weston Solutions, Inc. v. City of Atlanta; Case No. 2002CV60591; Superior Court of Fulton County, Georgia, in the total amount of \$390,000;

BE IT FURTHER RESOLVED THAT the Chief Financial Officer is authorized to pay to Weston a total sum of \$390,000 to be paid from Account No. M31H020491AA574001, on behalf of the City, in exchange for Weston's execution and delivery to the City of a Settlement Agreement and a filed Notice of Voluntary Dismissal With Prejudice dismissing the lawsuit;

BE IT FURTHER RESOLVED THAT the City Attorney is authorized, on behalf of the City, to execute the Settlement Agreement with Weston;

BE IT FURTHER RESOLVED THAT the Settlement Agreement will not be binding upon the City and the City will incur no liability under it, until it has been executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form, duly executed by Weston and delivered to Weston.